

Paul W. Moncrief, Esq. SBN 204239  
JOHNSON & MONCRIEF, PLC  
295 S. Main Street, Suite 600  
Salinas, CA 93901  
Telephone: (831) 759-0900  
Facsimile: (831) 759-0902

Attorney for Plaintiff, Owyhee Produce LLC

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

**OWYHEE PRODUCE LLC,**

**Plaintiffs,**

**v.**

**KIMBERLY PEREZ, an individual, MARK  
PEREZ, an individual, EARLY BIRD  
PRODUCE, and DOES 1 through 20, Inclusive,**

**Defendants.**

**Case No. C 07-04117 PVT**

**AMENDED APPLICATION FOR  
DEFAULT JUDGMENT BY COURT**

**DATE: 01/11/08  
TIME: 10:00 A.M.  
DEPT: Courtroom 3, 5<sup>th</sup> Floor**

**TO: DEFENDANTS KIMBERLY PEREZ, MARK PEREZ, AND EARLY BIRD  
PRODUCE AND YOUR ATTORNEY(S)**

PLEASE TAKE NOTICE THAT on January 11, 2008, at 10:00 a.m., or as soon thereafter as this matter may be heard by the above-entitled Court, located at 280 South First Street, San Jose, California 95113, Plaintiff will present its amended application for a default judgment against Defendants. The clerk has previously entered the default of said Defendants on October 9, 2007.

At the time and place of hearing, Plaintiff will present proof of the following matters:

1. Defendants Kimberly Perez, Mark Perez and Early Bird Produce are not infants or incompetent persons or in military service or otherwise exempted under the Soldiers' and Sailors' Civil Relief Act of 1940; and

1           2.       Said defendants have not appeared in this action.

2           3.       Plaintiff is entitled to judgment against said defendants on account of the claims  
3 pleaded in the complaint, to wit: breach of contract; enforcement of statutory trust provisions  
4 of PACA; for violation of PACA, failure to account and pay promptly; for injunctive relief  
5 and/or temporary restraining order; unjust enrichment; conversion; and declaratory relief.

6           4.       The amount of judgment sought is the sum of \$59,149.35, plus prejudgment  
7 interest, as set forth in the declaration of Paul W. Moncrief, Esquire.

8           This Application is based on this Notice, the Declaration of Paul W. Moncrief,  
9 Esquire, and the pleadings, files and other matters that may be presented at the hearing.

10          Dated: November 9, 2007

JOHNSON & MONCRIEF, PLC

11  
12                   /s/ \_\_\_\_\_

13                   Paul W. Moncrief  
14                   Attorneys for Plaintiff  
15                   Owyhee Produce, LLC  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I am employed in the County of Monterey, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 295 S Main Street, Suite 600, Salinas, CA 93901

On the date set forth below, I caused the following document(s) entitled:

**AMENDED APPLICATION FOR DEFAULT JUDGMENT BY COURT**

to be served on the party(ies) or its (their) attorney(s) of record in this action listed below by the following means:

XX **(BY MAIL)** By placing each envelope (with postage affixed thereto) in the U.S. Mail at Johnson & Moncrief, PLC, 295 S Main Street, Suite 600, Salinas, California. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and in the ordinary course of business, correspondence would be deposited with the U.S. Postal Service the same day it was placed for collection and processing.

**(BY HAND-DELIVERY)** By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

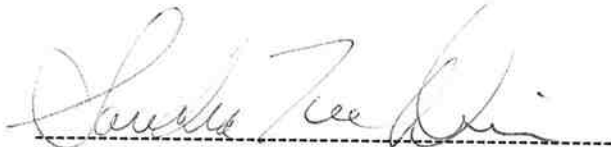
**(BY OVERNIGHT DELIVERY)** By placing with Federal Express and/or UPS a true copy thereof, enclosed in a sealed envelope, with delivery charges to be billed to Johnson & Moncrief, PLC at the address(es) shown below.

**(BY FACSIMILE TRANSMISSION)** By transmitting a true copy thereof by facsimile transmission from facsimile number (831) 759-0902 to interested party(ies) of their attorney of record to said action at the facsimile number(s) shown below.

addressed as follows:

Kimberly Perez  
Mark Perez  
Early Bird Produce  
917 Entrada Street  
Soledad, CA 93960

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 9, 2007, in Salinas, California.

  
Sandra Lee Divens